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Nemo me impune lacessit

December 18th, 2024

REQUEST FOR LEAVE TO FILE

SURREPLY

Kissinger N. Sibanda v. David Ellison et al, 1:24-06310 (JMF)

Hon. Judge Jesse M. Furman:

Plaintiff requests leave to file a surreply, addressing new arguments raised in defendants Reply, docketed December 18th, 2024. Defendants are making a request to adjust the sanctions briefing in their reply motion, thus ambushing plaintiff who would have opposed, any changes to ECF No. 112, given his workload. And the importance of the appellate proceedings, 24:2348 (2nd. Cir).

If the court grants, this leave to file a surreply then it should consider the following to the record:

Specifically, defendants ask for the sanctions briefing schedule to be lifted. Def. Reply at 8. This is despite the court's order, ECF No. 112, stating:

the Court will defer consideration of - and further briefing on - both Defendants motion for sanctions, see ECF No. 80, and Sibanda's motion for sanctions, see ECF No. 89, until the Court has resolved Defendants' motion to dismiss.

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Plaintiff opposes any changes to the calendar stated in ECF No. 112, regrading sanctions briefing. Defendants are seeking to have this Court rush to judgment, as opposed to first having the motion to dismiss decided as previously ruled by this court. *Id.* Plaintiff opposes any adjustment to the court's prior decision, ECF No. 112, based on the complex nature of this dispute, and bearing that parties have a January 7th, 2025, oral argument they must present to the Second Circuit (on the stay motion regarding ECF No. 154). That has been calendared by the second circuit.

Plaintiff agrees with the court's decision, ECF No. 112, that waiting for the motion to dismiss to be "resolved," is the most judicious approach, before taking sanctions briefing, as parties cannot continue to brief issues which are before the second circuit, as if they were not appealed. And any opposition to sanctions, must take into consideration, a parties' appellate argument as one coherent piece of advocacy.

Defendants' request for expedited briefing on the sanctions has no basis in the posture of this dispute. Moreover, defendants did not appeal, Order, ECF No. 112, when it was entered, only seeking now, to have the court change it to their advantage, by merely asking nicely - to confound the proceedings and burden plaintiff with more briefing in the lower court, when a proper appeal is still pending before the Second Circuit. This is unfair.

Defendants wish to encourage this court to proceed as if the appellate decisions and opinions, will have no bearing whatsoever on this court's decision making. However, inadvertently, this court would have to retract an order in this instant case, should the appeal decision reverse its earlier finding on a common issue between 1:23-cv-05752 (JMF) and 1:24-cv-06310(JMF). Accordingly,

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ECF No. 112, briefing schedule for sanctions, should not be disturbed in the interest of justice.

Plaintiff thanks the court for its consideration of this matter.

Date: December 18th, 2024



Signature

Kissinger N. Sibanda Esq (SJD)

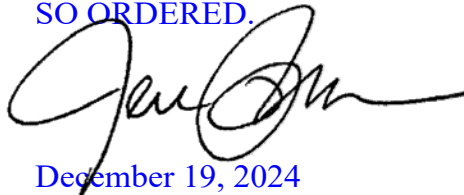
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The Court will consider this submission to the extent it agrees that Defendants made new arguments in their reply. In light of that, there is no need for further submissions in connection with the pending motion, which the Court will take under advisement. If the Court concludes that oral argument would be appropriate, it will so advise the parties.

The Clerk of Court is directed to terminate ECF No. 132.

SO ORDERED.



December 19, 2024